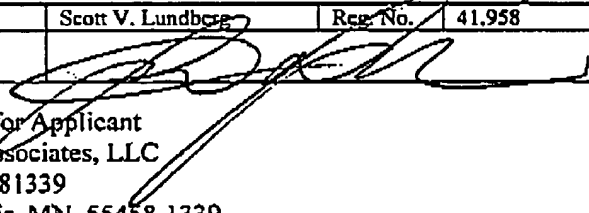
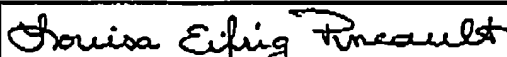


Applicant(s)	Robert E. Lewis	FACSIMILE TRANSMITTAL FORM
Serial No.	09/993,320	
Filing Date	Nov 19, 2001	
Confirmation No.	5659	
Examiner Name	James K. Trujillo	
Group Art Unit	2116	
Attorney Docket No.	100.290US01	
Title: RESILIENT BOOT PROM LOADER		

RECEIVED
CENTRAL FAX CENTER
JUN 02 2006

TOTAL PAGES: 5 pgs. (including cover sheet)
TO CENTRAL FAX - (571) 273-8300
Attention: Examiner James K. Trujillo, Art Unit 2116

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Enclosures								
The following documents are enclosed:								
1. Reply Brief								
Please charge any additional fees or credit any overpayments to Deposit Account No. 502432.								
Submitted By								
Name	Scott V. Lundberg	Reg. No.	41,958	Telephone	(612) 332-4720			
Signature				Date	6-2-06			
Attorneys for Applicant Fogg & Associates, LLC P.O. Box 581339 Minneapolis, MN 55458-1339 T: 612-332-4720 F: 612-332-4731								
CUSTOMER NUMBER: 34206								
Certificate of Transmission								
I certify that this paper, and the above-identified documents, are being transmitted by facsimile to Examiner James K. Trujillo, Group Art Unit 2116 (Facsimile No. 571-273-8300) of the United States Patent and Trademark Office on <u>2 June 2006</u> .								
Name	Louisa E. Pineault	Signature						

**RECEIVED
CENTRAL FAX CENTER**

JUN 02 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS

Appellants:	Robert E. Lewis	REPLY BRIEF
Serial No.	09/993,320	
Filing Date	11/19/2001	
Group Art Unit	2116	
Examiner	James K. Trujillo	
Attorney Docket No.	100.290US01	
Title: RESILIENT BOOT PROM LOADER		

REMARKS

In the Examiner's Answer, the Examiner repeated the grounds of rejection from the Final Office Action. (*Examiner's Answer*, ¶¶ 1-61). The Examiner further addressed a number of comments in response to arguments in the Appellant's Appeal Brief. The Appellants provide the following arguments in response to the Examiner's Answer:

I. In addressing the rejection of claims 27 and 75 in the Examiner's Answer, the Examiner stated that "Ha discloses that when a communication device (personal computer) is booted it requests to a management device ("HOST computer") to upgrade the firmware." (*Examiner's Answer*, p. 35). The Examiner further states that the "device ID (model ID) of the communication device is then transferred to the management device (col. 5, lines 15-16). After the management device receives the ID the firmware for the communication device is upgraded (col. 5, lines 17-19). As can be seen, there is no administrator used to initiate the firmware upgrade based on the device ID of each of one or more communication devices." (*Examiner's Answer*, p. 35) Thus, since Ha uses a device ID in initiating a firmware upgrade for one or more communications devices, the Examiner concluded that "Ha teaches, as per the claimed invention, *initiating a firmware upgrade without an administrator based on the device ID of each of one or more communication devices.*"

The Appellants respectfully assert that Ha does not teach or suggest a method of "receiving a device ID" at a management device, and "initiating a firmware upgrade

REPLY BRIEF**PAGE 2**

Serial No.: 09/993,320

Filing Date: 11/19/2001

Attorney Docket No.: 100.290US01

Title: RESILIENT BOOT PROM LOADER

without an administrator based on the device ID of each of the one or more communication devices" as cited in claims 27 and 75. The Examiner pointed to Fig. 6 of Ha as meeting this limitation, citing Col. 6, lines 5-30 of Ha. Applicant respectfully traverses this assertion and requests that the rejection be reversed. Ha at Col. 6, lines 5-30 describes (emphasis added) "the process of upgrading the BIOS executed in the personal computer which requested the BIOS to be upgraded when the personal computer is booted." The process disclosed by Ha relates to an upgrade when the personal computer is turned on ("booted"). This does not teach or suggest *a management device initiating the firmware upgrade without an administrator based on the device ID of each of the one or more communication devices*. In fact, it is the communication device ("personal computer") of Ha that requests the upgrade. In order to properly reject a claim under 35 U.S.C. § 102, the elements must be arranged as required by the claim. *In re Bond*, 910 F. 2d 831, 15 U.S.P.Q. 2d 1566 (Fed. Cir. 1990).

In summary, Ha does not teach or suggest a method of receiving a device ID at a management device, and initiating a firmware upgrade without an administrator based on the device ID of each of the one or more communication devices as cited in claims 27 and 75. Therefore, the rejection of claims 27 and 75 is not proper.

II. In addressing the rejection to claim 1 in the Examiner's Answer, the Examiner stated that "Itoh does not teach away from the present invention" and "Itoh is not relied upon to teach "initiating a firmware upgrade without an administrator intervention based on the device ID." Itoh is relied upon to teach the limitation of *a device ID indicating a model and revision for a device.*" (*Examiner's Answer*, p. 37). The Appellants respectfully assert that the combination of Ha and Itoh relies on a faulty premise. The Examiner indicates that:

[T]he system of Itoh is similar to that of Ha in that Itoh also teaches a system that updates firmware for a particular device. As taught by Itoh using both the model number and revision number provides the advantage of determining if [the] firmware is necessary (col. 18, lines 40-42)."

(*Examiner's Answer*, p. 11)

REPLY BRIEF**PAGE 3**

Serial No.: 09/993,320

Filing Date: 11/19/2001

Attorney Docket No.: 100.290US01

Title: RESILIENT BOOT PROM LOADER

The Examiner further states that "One of ordinary skill would be motivated to make this modification in order to determine [if] the update is necessary." (*Examiner's Answer*, p. 11)

The Appellants respectfully assert that there is nothing in the portions of Ha cited by the Examiner that indicate a problem with the way Ha accomplishes the firmware download that would be solved by Itoh. Contrary to the Examiner's position, there is nothing that indicates that the system of Itoh would improve Ha. Therefore, one of ordinary skill in the art would not have been motivated to modify Ha with the device ID of Itoh. Accordingly, the rejection of claim 1 is not proper.

Further, the Appellants respectfully contend that the above comments for claim 1 apply to claims 13 and 20 as well. Accordingly, the rejection of these claims is not proper for the reasons stated above.

III. In addressing the rejection to claim 34, the Examiner stated that, "Comer teaches that in most communications systems users receive (the subscribers of Comer) more information than they send [and] they would benefit by using ADSL communication devices. Thus, the system of Ha would also benefit from using ADSL devices." (*Examiner's Answer*, p. 42). The Appellants contend that the arguments presented above with respect to claim 1 also apply to this claim. Therefore, the Appellants respectfully assert that claim 34 is not unpatentable over Ha in view of Itoh.

Further, the Examiner correctly indicates that "Ha does not specifically disclose wherein the communication device is an ADSL communication device." (*Examiner's Answer*, p. 42) The Examiner asserts that it "would have been obvious to one of ordinary skill in the art, having the teachings of Ha and Comer before them at the time the invention was made to modify Ha to use an ADSL communication device as his communication device." (*Examiner's Answer*, p. 42) As stated above, neither Ha nor Itoh teach or suggest the method of claim 34. The addition of Comer does not cure this defect. Therefore, the rejection of claim 34 is not proper.

REPLY BRIEF**PAGE 4**

Serial No.: 09/993,320

Filing Date: 11/19/2001

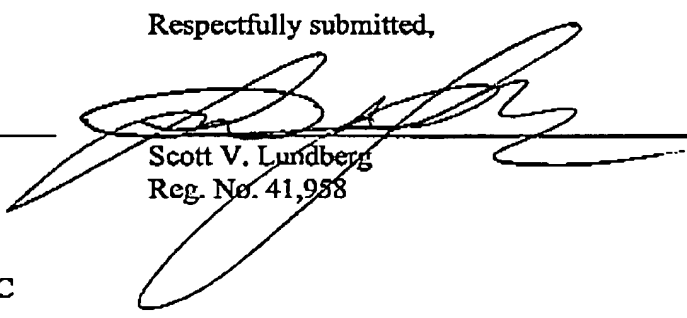
Attorney Docket No.: 100.290US01

Title: RESILIENT BOOT PROM LOADER

IV. Throughout the Examiner's Answer, the Examiner takes issue with the Appellant's arguments concerning the lack of evidence to support the motivation to combine the various references cited by the Examiner. In the Final Office Action, and again in the Examiner's Answer, the Examiner has provided specific citations to the various references to support the contentions that the references teach one or more of the elements of the claims. Further, the Examiner has provided several citations from the references to indicate why the element from one reference would be beneficial in the other reference. The Appellant's contention is that the Examiner has failed to provide evidence that supports the motivation to modify the primary reference with the teachings of the other references. It is not enough that a secondary reference teaches an element if there is no need for the element in the primary reference. For example, the Examiner asserts that Itoh teaches a device ID indicating a model and revision for a device and thus it is obvious to combine Itoh with Ha. The Appellants respectfully assert that there is no evidence to support the proposed modification because there is no indication that there is a problem with Ha (that is, the primary reference) that is solved by this element of Itoh. Similar arguments apply to the asserted motivation to combine the other references.

Therefore, the Appellants respectfully assert that the Examiner has failed to provide a proper evidentiary basis for the combination of the references. Reversal of the final rejections is respectfully requested.

Respectfully submitted,

Date: 6-2-06
Scott V. Lundberg
Reg. No. 41,958

Attorneys for Applicant
Fogg and Associates, LLC
P.O. Box 581339
Minneapolis, MN 55458-1339
T 612 332-4720
F 612 332-4731